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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,052	12/19/2000	Bruce Perlmutter	10360-079001/13361HUUS01U	4810
34645	7590	04/02/2009		
Anderson Gorecki & Manaras, LLP			EXAMINER	
Attn: John C. Gorecki			DUONG, DUC T	
P.O BOX 553				
CARLISLE, MA 01741			ART UNIT	PAPER NUMBER
			2419	
			NOTIFICATION DATE	DELIVERY MODE
			04/02/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

john@gorecki.us  
jgorecki@smmalaw.com  
officeadmin@smmalaw.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/740,052	PERLMUTTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Duc T. Duong	2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 February 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,4-10 and 13-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,4-10 and 13-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 2, 2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 4-10, and 13-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-6, 8-10, 13-15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiryaman et al (U.S. Patent 7,149,222 B2) in view of Staples et al (US Publishing 2002/0118671 A1).

Regarding to claims 1 and 10, Wiryaman discloses a system (fig. 2) for managing use of available bandwidth of a remote link 122 by metering Internet Protocol IP packets that will flow over the remote link (col. 4 lines 11-21), comprising a virtual private

network VPN server 220 (fig. 2 col. 10 lines 15-23) for assigning a portion of the bandwidth of the remote link to at least one application group (fig. 8 col. 13 lines 36-59) and a meter 460 (fig. 4 col. 6 lines 35-46) associated with the VPN server that will meters the IP packets flow over the remote link to minimize contention between application groups for a portion of the bandwidth of the remote link to thereby manage the use of the bandwidth of the remote link by the application groups (col. 7 lines 11-29), wherein the remote link has a smaller bandwidth than a bandwidth of other links 222/224 (col. 4 lines 60-67) on the network that are connected to the VPN server or the meter, and wherein the remote link is remote from the VPN sever such that the remote link is not directly connected to the VPN server or the meter (col. 5 lines 9-15).

Wiryaman fails to teach for the VPN server configured to at least one authenticate, encapsulate, and de-encapsulate at least a portion of the packets.

However, Staples discloses a data communication system comprising a VPN server 122 for performing authentication of user and encryption of data (fig. 25B page 35 paragraph 0421).

Thus, it would have been obvious to a person of ordinary skill in the art to employ the server with VPN processing as taught by Staples in Wiryaman's server. The motivation to do so would have been to enhance Wiryaman's server functionality by providing authentication and encryption so that a higher level of security and quality of services can be achieved (Staples page 4 paragraph 0041).

Regarding to claims 4 and 13, Wiryaman discloses the packets belonging to the application group share a pre-defined configuration (col. 7 lines 39-49).

Regarding to claims 5 and 14, Wiryaman discloses the packets belonging to the application group contend equally for the portion of the bandwidth (col.7 lines 22-26).

Regarding to claims 6 and 15, Wiryaman discloses the meter manages flow rate of the packets going through the server in either direction (col. 7 lines 26-30).

Regarding to claims 8 and 17, Wiryaman discloses a user interface that allows a user to specify the bandwidth of the link (fig. 8 col. 13 lines 18-59).

Regarding to claims 9 and 18, Ma discloses a user interface that allows a user to specify the assigned portion of the bandwidth (fig. 8 col. 13 line 60-col. 14 line 12).

5. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiryaman and Staples in view of Ma et al (US Patent 5,953,338).

Regarding to claims 7 and 16, Wiryaman and Staples disclose all the limitations with respect to claims 1 and 10, except for rejecting the IP packets if the flow rate exceeds the portion of the assigned bandwidth even if the links connected to the VPN server have sufficient capacity to transport the IP packets. However, Ma discloses a method and system for managing bandwidth of network links that includes rejecting the call requested if the flow rate exceeds the assigned portion of the bandwidth even of the links have sufficient capacity for handling the call (col. 8 lines 1-12). Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to employ such rejecting step or means as taught by Ma into Wiryaman and Staples's system to account for overload condition and take necessary actions to address such condition, and thereby reduces network congestion.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is (571)272-3122. The examiner can normally be reached on M-F (8:00 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. T. D./  
Examiner, Art Unit 2419

/Wing F. Chan/  
Supervisory Patent Examiner,  
Art Unit 2419  
3/26/09